In the High Court of Punjab and Haryana at Chandigarh

C.R. No. 6562 of 2006
Date of decision: 14-12-2006

Ashok Kumar .....Petitioner

Versus

Rakam Singh and others .....Respondents

CORAM: Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr. Ashish Aggarwal, Advocate, for the petitioner.

VINOD K.SHARMA,J.

The petitioner by way of present revision petition has challenged the order dated 21-11-2006 passed by the learned Civil Judge (Jr. Divn.), Karnal, dismissing the application moved under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure for amendment of the written statement filed on behalf of defendant Nos.2 to 4.

The plaintiff- respondent No.1 (herein) has filed a suit for possession of land by way of specific performance of the contract entered into with defendant No.1 or in the alternative for recovery of a sum of Rs. 2,28,000/- (Rs Two lacs twenty eight thousands) on account of refund of earnest money. The plaintiff impleaded defendant Nos. 2 to 6 as parties to the suit, who were subsequent purchasers of the land from defendant No.1.

After the plaintiff had led his evidence and when the case was fixed for evidence of the defendants, an application was moved by defendant Nos. 2 to 4 under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the written statement, so as to incorporate preliminary objection No.10, which reads as under:-

> " That the suit of the plaintiff is not maintainable in view of the facts that the value of the land is Rs. 1.60 lacs at the time of alleged agreement of sale, whereas the value of the land shown in the agreement is only Rs. 60,000/- per acre, which itself shows that how fraud has been committed by the plaintiff. The value is disproportionate to the market value of the land."

The trial Court rejected the application firstly on the ground that no amendment could be allowed after the commencement of the trial in view of amendment of order 6 Rule 17 of the CPC, secondly, on the ground that for contesting the suit for specific performance, the validity of the agreement has to be seen and outcome of that is not dependent on the valuation of the land.

Mr. Ashish Aggarwal, learned counsel, appearing on behalf of the petitioner, contended that the findings of the learned trial Court cannot be sustained as the suit was filed on 13th of May,1998 and, therefore, the amended provisions of order 6 Rule 17 were not applicable. It was next contended that in absence of pleadings to the

effect that the agreement was unconscionable, it will not be possible for the petitioner to lead evidence on this point and, therefore, the amendment was necessary. In support of this contention, learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Akbar Ali Vs. Vinod Khanna & another, 2004 (3) Civil Court Cases 566.** The learned counsel for the petitioner also placed reliance on another judgment of the Hon'ble Supreme Court in the case of **Salem Advocate Bar Association, Tamil Nadu Vs. Union of India, 2005 (3) RCR 530** to contend that the parties can lead additional evidence which could not be produced earlier in spite of due diligence or which was not known to them earlier. The deletion of provisions of Order 18 Rule 17-A of the CPC was of no consequence. The contention of the learned counsel for the petitioner, therefore, was that in the absence of the pleadings, the petitioner would be barred from leading any evidence on this point and, therefore, the amendment ought have been allowed.

I have considered the arguments raised by the learned counsel for the petitioner. Though it was correct on the part of the learned counsel for the petitioner to contend that amended provisions of order 6 rule 17 CPC were not applicable to the facts of this case, however, no fault can be found with the impugned order passed by the learned trial Court, firstly, for the reason that the amendment has been sought by defendant Nos.2 to 4, who were subsequent purchasers and, therefore, they had no independent right to challenge the validity of the

agreement executed between the plaintiff and defendant No.1. The right of the defendants No. 2 to 4 to contest the suit for specific performance was only limited on the ground of being bona fide purchasers. The defendant Nos. 2 to 4 by way of amendment were seeking to incorporate a pleading to raise a ground that the agreement executed between the plaintiff and defendant No.1 was unconscionable which was not permissible. Therefore, the judgments relied upon by the petitioner are not applicable to the facts of the present case. The learned trial Court, therefore, was right in coming to the conclusion that in order to decide the suit for specific performance, only the validity of the agreement is to be seen. In the present case, defendant No.1 having taken no such plea, it was not open to the subsequent purchasers to raise such a plea that the agreement was outcome of fraud as is sought to be pleaded. Therefore, there is no merit in the present civil revision which is, accordingly, dismissed in limine.

Dec. 14, 2006 **(VINOD K.SHARMA)**
'dls' **JUDGE**